

**Lewis County Planning Commission  
Public Meeting  
Lewis County Courthouse  
351 NW North St.  
Chehalis, WA 98532**

**May 24, 2011 – 7:00 p.m.  
Meeting Notes**

**Planning Commissioners Present:** Mike Mahoney, Jim Lowery, Bill Russell, Richard Tausch, Arny Davis

**Planning Commissioners Absent:** Bob Guenther, Rachael Jennings

**Staff Present:** Jerry Basler, Glenn Carter, Pat Anderson

**Others Present:** Please see sign in sheet

**Handouts/Materials Used:**

- Agenda
- Meeting Notes from April 26, 2011
- Memo from Jerry Basler re: 2011 Rezone Requests Staff Report
- Staff Reports

**I. Call to Order**

Chairman Russell called the meeting to order at 7:00 p.m. The Commissioners introduced themselves.

**II. Old Business**

*A. Approval of the meeting notes from April 26, 2011*

Chairman Russell entertained a motion to approve the meeting notes from April 26, 2011.

Commissioner Lowery made the motion; Commissioner Mahoney seconded and the motion carried.

*B. 2<sup>nd</sup> Workshop on Rezone Requests*

The Chair recognized Mr. Jerry Basler. Mr. Basler stated at the first workshop a memo briefly described the rezones and maps of each rezone were distributed. The draft staff reports that were included in tonight's Planning Commissioners' packets were more detailed.

Mr. Basler explained the different format and the information that was included in each report.

Mr. Basler stated the applications can be included, along with any geotechnical reports if the Planning Commission would like to see those. After discussion the Planning Commissioners decided that Mr. Basler would have a copy of each application at the public hearing in case any questions arise.

Mr. Basler briefly went through each application.

The Herbrand Company

The request is to change from Agricultural Resource Land (ARL) to Mineral Resource Land (MRL). If approved, it would retain its natural resource land designation. It has been used by DNR in the past and has been mined in the past.

Chairman Russell stated the memo that Mr. Basler sent out refers to prime farmland. He asked what that is. Mr. Basler stated the computer program used by Lewis County has soils designated by the US Government. Chairman Russell thought the term "prime farm land" should be changed to "prime soils".

Chairman Russell stated the report also mentions "moderate to somewhat excessive drainage". He asked the purpose of that statement. The way Chairman Russell understands the manual the soil already takes into account the drainage issue. When the staff report mentions prime farm land rather than soils, it might make people think there is something other than the soils analysis involved. It should not matter if it appears to be drained because the soils analysis already takes into account the natural drainage of the soil. If it is not an added drainage, it does not change the soil.

Jill Hartman

This request is from ARL to RDD-5. Mr. Basler is waiting for a soils report on this property. The owner would like to subdivide if the rezone is approved.

Chairman Russell had an issue with the language in this application regarding "farmland" versus "soils". He was also concerned about this becoming a spot zone and the fact that there is a nursery on the property, which is an agricultural use; it is in the ag tax program. Even if the soil is changed, Chairman Russell was not sure there would be the ability to change the zoning.

Mr. Basler stated at this point staff does not see any significant change. Chairman Russell asked if staff would change its recommendation based on the soils report. Mr. Basler stated the staff recommendation would most likely remain the same.

Chairman Russell asked why a soils analysis was recommended since there is not a big chance that the zoning would be changed. Mr. Basler stated the owners had talked to someone at the county previously and was told to submit an application requesting a change and that a soil survey would be required.

Commissioner Mahoney stated the analysis says most of the site is poorly drained and that the soils are prime if drained. When the Planning Commission went through the ARL process, and because it was kicked back so many times, they included all the soils if properly drained. But any land owner that has a declaration stating their property is not drained can get relief in that manner. The fact that it is not drained and has a pipeline going through it, as well as the size, does not make it commercially sustainable for agriculture. He supports the land owner in this application.

Commissioner Davis stated because of the entire area around this property it will be difficult to make this agricultural land but he does not want to go sideways with the Growth Management Hearings Board again and if this acreage is taken out, it will set a precedent. This is a natural area for housing with Chehalis moving south and Napavine moving east. He finds it difficult to consider it sustainable agricultural land.

Commissioner Tausch agreed with Commissioners Davis and Mahoney.

Commissioner Lowery stated there is always the desire to go with what the property owner wants but after all that has been gone through with GMA he believes it would be pushing the line to rezone this property. It appeared to him that it would become a spot zone.

Chairman Russell stated the Planning Commission has the right to request that this area is looked at again, if it could be used differently and if the soils do not support the current designation – not one parcel, but the area.

Mr. Glenn Carter asked if the declaration has been submitted that the soils are not drained. Mr. Basler stated it has not been submitted.

Chairman Russell asked Mr. Carter if this area could be brought back to consider whether any errors were made in the designation and if it still meets the criteria.

Mr. Carter stated there had been considerable discussion on that and he recalls that the landowner would be required to initiate the process that a mistake was made; it put the burden on them.

Chairman Russell stated unless there is a united land owner's consortium this will be dealt with one parcel at a time and nothing will get done. He asked if the Planning Commission has the authority to request looking at this entire area again.

Mr. Carter stated the county has the authority to amend its comprehensive plan at any time; technically the authority is there to look at an area and state that a mistake has been made.

Chairman Russell asked if that statement could be limited to just this area. Mr. Carter stated if the county initiated that, it could be limited to a particular area. That would, however, raise concerns of partiality.

Chairman Russell asked if Mr. Carter recommends that the Planning Commission not look at the entire area and only at the parcel. Mr. Carter stated that would be his recommendation because it is consistent with the approach that the county has used in the past.

Commissioner Davis stated he did not want to raise the ire of the Growth Board but he would like to see this property rezoned.

#### Port of Chehalis

Mr. Basler stated the request for change is for property that surrounds the area that is zoned Rural Area Industrial. It is currently RDD-5 but there is no residential area developing there.

Commissioner Mahoney stated there are 8 or 9 parcels to the southeast of the property in question. He asked if those are not being considered in the rezone.

Mr. Basler stated the Port explained that this area was subdivided before with the intention of sell off the lots for residential use but it didn't work out; those parcels are not included in the request.

#### Hampton Lumber

Mr. Basler stated the 55 acres was formerly a mill site. There are actually two parcels but it would be one rezone. There were discussions last year with staff that this would be the proposal and they would later come back and do a boundary line adjustment adjoining these two parcels. For now they felt that the southern portion of the abandoned mill site would be adequate. The intent down the road is to provide some type of work force housing. The owners are developing a master plan. Mr. Basler asked why they didn't take in the whole site and they stated at this time they did not want to overextend

themselves. This area is also in a LAMIRD and to try to put the entire property in at once would be too much.

Mr. Basler stated currently the properties are zoned Small Town Industrial and they want to change it to Small Town Mixed Use which would allow some housing.

Commissioner Mahoney asked if there was a chance that this property would ever become industrial again.

Chairman Russell stated under the previous County Commissioners there was a chance to have Safeway move their photo processing center into that site; it was treated poorly and they went elsewhere. The potential for using this site is there but the change they are requesting should be done in his opinion.

Mr. Basler stated that was another reason for leaving that northern portion out. The owners felt that a large manufacturer probably would not locate there; it would more likely be smaller companies and that is one reason why they wanted to see what would happen there before they changed it to all housing.

#### Norman Gastfield

This is a request from ARL to RDD-5. The staff recommendation is to leave it as ARL mainly because it is totally surrounded by ARL making it hard to defend the change.

Commissioner Tausch asked if spot zoning comes from GMA laws or was it a county policy, and is there a definition of spot zoning.

Mr. Carter stated spot zoning is a GMA concept. It exists in GMA and in board decisions interpreting GMA. The problem in the past is defining it. A spot zone in this case is easier to define because when one looks at the map if that area is yellow (signifying RDD-5) it stands out as the only one. The concept of spot zoning is one of partiality – spot zoning gives the impression that one is responding favorably to one person, perhaps because of who that person is. We are supposed to be impartial in how we zone, and spot zoning creates the appearance of partiality. Beyond that, it is difficult to define.

Commissioner Tausch stated what Mr. Carter just said makes an argument in his mind for the review of an area rather than an individual parcel.

Mr. Carter stated while that is a good point, in the case of the ARL designations there was a process that was used and the county tried to be consistent with that process. At the very end when it was remanded back with those five issues to address, one of those was prime if drained, in recognition that we were going to be unable to get onto the property to see if it has been drained, the decision was to allow people to tell us that their property had not been drained. That was the remedy we chose and we did consistently apply the process of determining ARL. Property owners still have the opportunity to come to the county to state that their property was designated incorrectly.

Commissioner Tausch stated it is an easy out if it does not create spot zoning, or is that an exception?

Chairman Russell stated he has the same concern. As long as this is addressed one parcel at a time it is not going to change the zoning of the area because it will create spot zones almost every time when only one applicant comes forward. Their soil may not be drained or prime soil but it is in the center of

ARL and is not going to get changed one parcel at a time. When there is an area that we know is not prime because it is not drained we should look at that as an area.

Mr. Carter stated assuming for a moment that these other lands to the northeast had the same problem, prime if drained, and those people are not motivated to come in and if only this property owner comes in he would recognize it as a spot zone. Mr. Carter stated it is an imperfect process. He would hope that all the property owners in an area like that would get together.

Commissioner Mahoney stated the acreage standing alone, according to the criteria, does not meet ARL; it is too steep, and most of it is not prime. He believes that the steep slopes are owned by the same people who have farm land on top so this is not a stand-alone parcel. It was included in ARL because it was sandwiched in between ARL and owned by one side or the other. We tried not to break up parcels by looking at ownership. For those reasons Commissioner Mahoney would support staff's recommendation to leave this as ARL.

Chairman Russell asked if there is a mechanism which would allow a landowner to take that portion of their property that does not meet the ARL designation as far as soil goes and allow him some additional uses, such as additional homes or a small business.

Mr. Carter stated Mr. Andy Lane would say at this time that there is too much concentration on soils and that all the WAC criteria must be considered. When the county looked at the designations it looked at the properties and if the majority fit the criteria then the entirety of the parcel went in. To go back and do that differently would be a major undertaking.

Commissioner Mahoney stated any auxiliary uses or clustering of buildings was recommended and if possible put those structures on non-prime soils.

Commissioner Tausch stated Mr. Carter indicated that the Planning Commission could not take a small section and review it and decide that the entire area should have been zoned differently. What if a land owner gives us an application and we look at the surrounding lands, can we arbitrarily rezone the surrounding lands?

Mr. Carter stated that while we tend to think that most people would prefer to have their lands' ARL designation lifted in favor of something else, that is not always the case. There are people who chose to be in ARL. The due process would have to assume we would have to give notice and give them an opportunity to be heard before there would be a change to their land. We would have to satisfy at least the basic minimum requirements of notice of due process before we change zoning on any property, even if we deem it in their favor.

Commissioner Davis stated the Planning Commission does not make any changes. If we vote together we are making a recommendation to the BOCC and they can agree or not agree. From that perspective that is the only mark we can make on any one of these. The Planning Commission relies on staff that any recommendation it makes does not create problems with higher authorities.

Mr. Basler stated staff took a very conservative approach keeping in mind that Lewis County just came out of the moratorium.

Joan Rambo

This application was remanded back from the BOCC and Mr. Basler understood that the lady wants to sell the land but it needs to come out of ARL. Staff stated none of the zoning has changed in the area; the site is what it was then. He has not received a soils report yet.

Chairman Russell asked why the Board sent it back. What do they want the Planning Commission to do?

Mr. Basler stated the BOCC was not convinced that it should be designated ARL and that staff should take another look at it.

Chairman Russell asked if there is an affidavit from the land owner saying the land is not drained. Mr. Basler stated the owner would bring one in this week.

Commissioner Mahoney stated the whole area is designated ARL. There were a couple of dairies in that area at one time that are gone now. This ground is grass ground or tree ground. It is too wet for perennial crops. Grass production is only commercially viable if there is livestock to eat it and the livestock have left Lewis County. The lady is right: as a grass producing piece of property, it is not a commercially sustainable piece of ground. On the other hand, given the criteria that we had to use to make ARL recommendations, short of an affidavit, he does not think there is justification in changing the designation.

Chairman Russell pointed out on the map a small corner in yellow. He asked if that was part of the application. Mr. Basler stated it is part of it. She lives on that small portion.

Commissioner Davis stated he agrees with Commissioner Mahoney. Looking at the ARL land that is farther south, he believes that is spot zoning of ARL. He does not think you lose too much continuity in the surrounding ARL if she is allowed to opt out. That is another reason to give consideration to her request. He is inclined to support her request but he does not know how to do that legally. If the report comes back stating the land is not drained then he would adamantly endorse that we allow her request.

**III. Calendar**

The meeting scheduled for June 14 was canceled. Mr. Basler stated the Planning Commission needs to set a public hearing for June 28 for the rezone requests. Commissioner Mahoney made the motion; Commissioner Davis seconded. The motion carried.

**IV. Good of the Order**

No one wished to speak

**V. Adjourn**

A motion was made and seconded to adjourn. The meeting adjourned at 8:10 p.m.